

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1344

Introduced by Assembly Members Feuer and Alejo

February 18, 2011

An act to amend Sections 9255 and 9260 of the Elections Code, and to amend Sections 34457, 34458, 54954.2, ~~54956~~, and ~~54956.5~~ *and* 54956 of, to add Section 34458.5 to, to add Article 2.6 (commencing with Section 53243) to Chapter 2 of Part 1 of Division 2 of Title 5 of, and to add Chapter 10.1 (commencing with Section 3511.1) to Division 4 of Title 1 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1344, as amended, Feuer. Local governance.

(1) Existing law requires a charter commission to submit, among other things, a city charter to the voters of a city at either a special election called for that purpose, at any established municipal election date, or at any established election date, provided that there are at least 88 days before the election. Existing law also authorizes the governing body of any city or city and county to, among other things, propose a charter and submit the proposal for the adoption to the voters at either a special election called for that purpose or at any established municipal election date or at any established election date, provided there are at least 88 days before the election.

This bill would require a city charter or charter amendment, whether submitted to the voters by a charter commission or the governing body

of the city or city and county, to be submitted at the next established statewide general, *statewide primary*, or *regularly scheduled municipal* election date, provided there are at least 95 days before the election. This bill would also require a proposal to adopt a charter, whether submitted to the voters by a charter commission or the legislative body of a city or city and county to include in the ballot description an enumeration of new city powers as a result of the adoption of the charter, including, but not limited to, whether the city council will, pursuant to an adopted charter, have the power to raise its own compensation and the compensation of other city officials without voter approval.

(2) The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees. The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law requires all contracts of employment between an employee and a local agency employer to include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, with a maximum of 18 months.

This bill would, on and after January 1, 2012, additionally prohibit an employment contract for a local excluded employee, as defined, from including any clause that provides for an automatic renewal *of a contract that provides for*; an automatic compensation increase, as specified, or an automatic compensation increase in excess of a cost-of-living adjustment. ~~The bill would also require the local agency, as defined, to complete a performance review of any excluded employee, as defined, before an increase in compensation in excess of a cost-of-living adjustment may be implemented for that individual. The bill would also specify that those records, procedures, and actions shall conform to the requirements of law, including, but not limited to, the Public Records Act and the Ralph M. Brown Act.~~ By expanding the duties of local officials, this bill would impose a state-mandated local program.

~~The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, the procedures for the appointment and compensation of excluded employees are an issue of statewide concern and that, therefore, all counties and cities, including~~

~~charter counties, charter cities, and charter cities and counties, would be subject to the provisions of the bill.~~

(3) Existing law sets forth the penalties for misuse of public resources or falsifying expense reporting, including, but not limited to, loss of reimbursement privileges, restitution to the local agency, civil penalties for misuse of public resources, and prosecution for misuse of public resources, including imprisonment for 2, 3, or 4 years, and disqualification from holding office, as specified.

This bill would require an officer or employee of a local agency who is convicted of a crime involving an abuse of his or her office or position, where the local agency for which the officer and employee was employed expends public funds for the legal *criminal* defense of that officer or employee, to pay restitution to the local agency that expended those funds.

(4) The Ralph M. Brown Act requires the legislative body of a local agency to post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, in a location that is freely accessible to members of the public. The act also requires the presiding officer of the legislative body to deliver written notice to each member of the legislative body, and to each local newspaper of general circulation and radio or television station requesting notice in writing if the presiding officer of the legislative body calls a special meeting, ~~or by telephone in the case of an emergency meeting.~~

This bill would require the legislative body, or the presiding officer of the legislative body, to provide notice of each meeting, including special meetings ~~and emergency meetings~~, on the local agency's Internet Web site, if the local agency has one, as specified.

(5) The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, the provisions of the act are an issue of statewide concern and that, therefore, all counties and cities, including charter counties, charter cities, and charter cities and counties, would be subject to the provisions of the bill.

~~The~~

(6) *The* California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9255 of the Elections Code is amended
2 to read:

3 9255. (a) A charter or charter amendment proposed by a charter
4 commission, whether elected or appointed by a governing body,
5 for a city or city and county shall be submitted to the voters at an
6 established statewide general, *statewide primary, or regularly*
7 *scheduled municipal* election date pursuant to Section 1200,
8 provided that there are at least 95 days before the election. A
9 charter commission may also submit a charter pursuant to Section
10 34455 of the Government Code.

11 (b) The following city or city and county charter proposals shall
12 be submitted to the voters at an established statewide general,
13 *statewide primary, or regularly scheduled municipal* election,
14 pursuant to Section 1200, provided that there are at least 88 days
15 before the election:

16 (1) An amendment or repeal of a charter proposed by the
17 governing body of a city or a city and county on its own motion.

18 (2) An amendment or repeal of a city charter proposed by a
19 petition signed by 15 percent of the registered voters of the city.

20 (3) An amendment or repeal of a city and county charter
21 proposed by a petition signed by 10 percent of the registered voters
22 of the city and county.

23 (4) A recodification of the charter proposed by the governing
24 body on its own motion, provided that the recodification does not,
25 in any manner, substantially change the provisions of the charter.

26 (c) Charter proposals by the governing body and charter
27 proposals by petition of the voters may be submitted at the same
28 election.

29 (d) The total number of registered voters of the city or city and
30 county shall be determined according to the county elections
31 official's last official report of registration to the Secretary of State
32 that was effective at the time the notice required pursuant to Section
33 9256 was given.

SEC. 2. Section 9260 of the Elections Code is amended to read:
9260. The petition shall be in substantially the following form:

Petition for Submission to Voters of Proposed Amendment to
the Charter of the City (or City and County) of ____

To the city council (or other legislative body) of the City (or
City and County) of ____:

We, the undersigned, registered and qualified voters of the State
of California, residents of the City (or City and County) of ____,
pursuant to Section 3 of Article XI of the California Constitution
and Chapter 2 (commencing with Section 34450) of Part 1 of
Division 2 of Title 4 of the Government Code, present to the city
council (or other legislative body) of the city (or city and county)
this petition and request that the following proposed amendment
to the charter of the city (or city and county) be submitted to the
registered and qualified voters of the city (or city and county) for
their adoption or rejection at the next statewide general, *statewide*
primary, or regularly scheduled municipal election date pursuant
to Section 1200.

The proposed charter amendment reads as follows:

First. (setting forth the text of the amendment) ____ (etc.)

Signature	Printed Name	Residence	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SEC. 3. Chapter 10.1 (commencing with Section 3511.1) is
added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 10.1. EXCLUDED LOCAL PUBLIC EMPLOYEES

3511.1. As used in this chapter, the following definitions apply:

(a) "Compensation" means any of the following:

(1) Annual salary or stipend.

(2) Local agency payments to the filer's deferred compensation
or defined benefit plans.

(3) Automobile and equipment allowances.

1 (4) Supplemental incentive and bonus payments.

2 (5) Local agency payments to the filer that are in excess of the
3 standard benefits that the local agency offers for all other
4 employees.

5 ~~(b) “Cost-of-living” means the Consumer Price Index that~~
6 ~~applies to a local agency, as calculated by the Department of~~
7 ~~Finance using a formula developed by the Department of Industrial~~
8 ~~Relations.~~

9 *(b) “Cost-of-living” means the California Consumer Price Index*
10 *for Urban Wage Earners and Clerical Workers as calculated by*
11 *the Department of Industrial Relations.*

12 (c) “Excluded employee” means any person who is or will be
13 employed by, and report directly to, the legislative body of a local
14 agency and who is not subject to the Meyers-Milias-Brown Act
15 (Chapter 10 (commencing with Section 3500)), Chapter 5
16 (commencing with Section 45100) of Part 25 of Division 3 of Title
17 2 of the Education Code, or Chapter 4 (commencing with Section
18 88000) of Part 51 of Division 7 of Title 3 of the Education Code.
19 “Excluded employee” includes any person who performs
20 governmental duties for a local agency pursuant to a contract with
21 that local agency and any person who is considered an at-will
22 employee.

23 (d) “Local agency” means a county, city, whether general law
24 or chartered, city and county, town, school district, municipal
25 corporation, district, political subdivision, or any board,
26 commission, or agency thereof, or other local public agency.

27 3511.2. On or after January 1, 2012, any contract executed or
28 renewed between a local agency and an excluded employee shall
29 not provide for any of the following:

30 (a) An automatic renewal of ~~the contract.~~ *a contract that*
31 *provides for an automatic increase in compensation that exceeds*
32 *the cost-of-living adjustment.*

33 ~~(b) An automatic increase in compensation that exceeds a~~
34 ~~cost-of-living adjustment.~~

35 (c) An automatic increase in compensation that is linked to
36 another contract, including an agreement entered into pursuant to
37 the Meyers-Milias-Brown Act (Chapter 10 (commencing with
38 Section 3500)), Chapter 5 (commencing with Section 45100) of
39 Part 25 of Division 3 of Title 2 of the Education Code, or Chapter

1 4 (commencing with Section 88000) of Part 51 of Division 7 of
2 Title 3 of the Education Code.

3 (d) A maximum cash settlement that exceeds the amounts
4 determined pursuant to Article 3.5 (commencing with Section
5 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.

6 ~~3511.3. (a) Before a local agency may increase the~~
7 ~~compensation of an excluded employee, the local agency shall~~
8 ~~complete a performance review of the excluded employee.~~

9 ~~(b) The records, procedures, and actions shall conform to the~~
10 ~~requirements of law, including, but not limited to, the Public~~
11 ~~Records Act (Chapter 3.5 (commencing with Section 6250) of~~
12 ~~Division 7) and the Ralph M. Brown Act (Chapter 9 (commencing~~
13 ~~with Section 54950) of Part 1 of Division 2 of Title 5).~~

14 ~~(c) This section shall not apply to cost-of-living adjustments to~~
15 ~~compensation.~~

16 SEC. 4. Section 34457 of the Government Code is amended
17 to read:

18 34457. After the charter prepared by the charter commission
19 has been filed in the office of the clerk of the governing body of
20 the city or city and county pursuant to Section 34455, the proposed
21 charter shall be submitted to the voters of the city or city and
22 county at the next established statewide general, *statewide primary,*
23 *or regularly scheduled municipal* election date pursuant to Section
24 1200 of the Elections Code, provided there are at least 95 days
25 before the election.

26 SEC. 5. Section 34458 of the Government Code is amended
27 to read:

28 34458. As an alternative to the procedure provided for in
29 Sections 34450 to 34457, inclusive, the governing body of any
30 city or city and county, on its own motion may propose or cause
31 to be proposed, amend or cause to be amended, or repeal or cause
32 to be repealed, a charter, and may submit the proposal for the
33 adoption, amendment, or repeal thereof, to the voters at the next
34 established statewide general, *statewide primary, or regularly*
35 *scheduled municipal* election date pursuant to Section 1200 of the
36 Elections Code provided there are at least 88 days before the
37 election.

38 SEC. 6. Section 34458.5 is added to the Government Code, to
39 read:

1 34458.5. A proposal to adopt or amend a charter, whether
2 submitted to the voters pursuant to Section 34457 or 34458, shall
3 include in the ballot description an enumeration of new city powers
4 as a result of the adoption of the charter, including, but not limited
5 to, whether the city council will, pursuant to an adopted charter,
6 have the power to raise its own compensation and the compensation
7 of other city officials without voter approval.

8 SEC. 7. Article 2.6 (commencing with Section 53243) is added
9 to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government
10 Code, to read:

11
12 Article 2.6. Abuse of Office
13

14 53243. If an officer or employee of a local agency, as defined
15 in Section 54951, is convicted of a crime involving an abuse of
16 his or her office or position, and the local agency for which the
17 officer or employee was employed expended public funds for the
18 legal *criminal* defense of that officer or employee, the officer or
19 employee shall pay restitution to the local agency that expended
20 those funds.

21 SEC. 8. Section 54954.2 of the Government Code is amended
22 to read:

23 54954.2. (a) (1) At least 72 hours before a regular meeting,
24 the legislative body of the local agency, or its designee, shall post
25 an agenda containing a brief general description of each item of
26 business to be transacted or discussed at the meeting, including
27 items to be discussed in closed session. A brief general description
28 of an item generally need not exceed 20 words. The agenda shall
29 specify the time and location of the regular meeting and shall be
30 posted in a location that is freely accessible to members of the
31 public and on the local agency's Internet Web site, if the local
32 agency has one. If requested, the agenda shall be made available
33 in appropriate alternative formats to persons with a disability, as
34 required by Section 202 of the Americans with Disabilities Act of
35 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
36 adopted in implementation thereof. The agenda shall include
37 information regarding how, to whom, and when a request for
38 disability-related modification or accommodation, including
39 auxiliary aids or services, may be made by a person with a

1 disability who requires a modification or accommodation in order
2 to participate in the public meeting.

3 (2) No action or discussion shall be undertaken on any item not
4 appearing on the posted agenda, except that members of a
5 legislative body or its staff may briefly respond to statements made
6 or questions posed by persons exercising their public testimony
7 rights under Section 54954.3. In addition, on their own initiative
8 or in response to questions posed by the public, a member of a
9 legislative body or its staff may ask a question for clarification,
10 make a brief announcement, or make a brief report on his or her
11 own activities. Furthermore, a member of a legislative body, or
12 the body itself, subject to rules or procedures of the legislative
13 body, may provide a reference to staff or other resources for factual
14 information, request staff to report back to the body at a subsequent
15 meeting concerning any matter, or take action to direct staff to
16 place a matter of business on a future agenda.

17 (b) Notwithstanding subdivision (a), the legislative body may
18 take action on items of business not appearing on the posted agenda
19 under any of the conditions stated below. Prior to discussing any
20 item pursuant to this subdivision, the legislative body shall publicly
21 identify the item.

22 (1) Upon a determination by a majority vote of the legislative
23 body that an emergency situation exists, as defined in Section
24 54956.5.

25 (2) Upon a determination by a two-thirds vote of the members
26 of the legislative body present at the meeting, or, if less than
27 two-thirds of the members are present, a unanimous vote of those
28 members present, that there is a need to take immediate action and
29 that the need for action came to the attention of the local agency
30 subsequent to the agenda being posted as specified in subdivision
31 (a).

32 (3) The item was posted pursuant to subdivision (a) for a prior
33 meeting of the legislative body occurring not more than five
34 calendar days prior to the date action is taken on the item, and at
35 the prior meeting the item was continued to the meeting at which
36 action is being taken.

37 (c) This section is necessary to implement and reasonably within
38 the scope of paragraph (1) of subdivision (b) of Section 3 of Article
39 I of the California Constitution.

1 (d) For purposes of subdivision (a), the requirement that the
2 agenda be posted on the local agency's Internet Web site, if the
3 local agency has one, shall only apply to a legislative body that
4 meets either of the following standards:

5 (1) A legislative body as that term is defined by subdivision (a)
6 of Section 54952.

7 (2) A legislative body as that term is defined by subdivision (b)
8 of Section 54952, if the members of the legislative body are
9 compensated for their appearance, and if one or more of the
10 members of the legislative body are also members of a legislative
11 body as that term is defined by subdivision (a) of Section 54952.

12 SEC. 9. Section 54956 of the Government Code is amended
13 to read:

14 54956. (a) A special meeting may be called at any time by the
15 presiding officer of the legislative body of a local agency, or by a
16 majority of the members of the legislative body, by delivering
17 written notice to each member of the legislative body and to each
18 local newspaper of general circulation and radio or television
19 station requesting notice in writing and posting a notice on the
20 local agency's Internet Web site, if the local agency has one. The
21 notice shall be delivered personally or by any other means and
22 shall be received at least 24 hours before the time of the meeting
23 as specified in the notice. The call and notice shall specify the time
24 and place of the special meeting and the business to be transacted
25 or discussed. No other business shall be considered at these
26 meetings by the legislative body. The written notice may be
27 dispensed with as to any member who at or prior to the time the
28 meeting convenes files with the clerk or secretary of the legislative
29 body a written waiver of notice. The waiver may be given by
30 telegram. The written notice may also be dispensed with as to any
31 member who is actually present at the meeting at the time it
32 convenes.

33 The call and notice shall be posted at least 24 hours prior to the
34 special meeting in a location that is freely accessible to members
35 of the public.

36 (b) For purposes of subdivision (a), the requirement that the
37 agenda be posted on the local agency's Internet Web site, if the
38 local agency has one, shall only apply to a legislative body that
39 meets either of the following standards:

1 (1) A legislative body as that term is defined by subdivision (a)
2 of Section 54952.

3 (2) A legislative body as that term is defined by subdivision (b)
4 of Section 54952, if the members of the legislative body are
5 compensated for their appearance, and if one or more of the
6 members of the legislative body are also members of a legislative
7 body as that term is defined by subdivision (a) of Section 54952.

8 ~~SEC. 10. Section 54956.5 of the Government Code is amended~~
9 ~~to read:~~

10 ~~54956.5. (a) For purposes of this section, “emergency~~
11 ~~situation” means both of the following:~~

12 ~~(1) An emergency, which shall be defined as a work stoppage,~~
13 ~~crippling activity, or other activity that severely impairs public~~
14 ~~health, safety, or both, as determined by a majority of the members~~
15 ~~of the legislative body.~~

16 ~~(2) A dire emergency, which shall be defined as a crippling~~
17 ~~disaster, mass destruction, terrorist act, or threatened terrorist~~
18 ~~activity that poses peril so immediate and significant that requiring~~
19 ~~a legislative body to provide one-hour notice before holding an~~
20 ~~emergency meeting under this section may endanger the public~~
21 ~~health, safety, or both, as determined by a majority of the members~~
22 ~~of the legislative body.~~

23 ~~(b) (1) Subject to paragraph (2), in the case of an emergency~~
24 ~~situation involving matters upon which prompt action is necessary~~
25 ~~due to the disruption or threatened disruption of public facilities,~~
26 ~~a legislative body may hold an emergency meeting without~~
27 ~~complying with either the 24-hour notice requirement or the~~
28 ~~24-hour posting requirement of Section 54956 or both of the notice~~
29 ~~and posting requirements.~~

30 ~~(2) Each local newspaper of general circulation and radio or~~
31 ~~television station that has requested notice of special meetings~~
32 ~~pursuant to Section 54956 shall be notified by the presiding officer~~
33 ~~of the legislative body, or designee thereof, one hour prior to the~~
34 ~~emergency meeting, or, in the case of a dire emergency, at or near~~
35 ~~the time that the presiding officer or designee notifies the members~~
36 ~~of the legislative body of the emergency meeting. This notice shall~~
37 ~~be given by telephone and all telephone numbers provided in the~~
38 ~~most recent request of a newspaper or station for notification of~~
39 ~~special meetings shall be exhausted. The notice shall also be posted~~
40 ~~on the local agency’s Internet Web site, if the local agency has~~

1 one, one hour prior to the emergency meeting, or, in the case of a
2 dire emergency, at or near the time that the presiding officer or
3 designee notifies the members of the legislative body of the
4 emergency meeting. In the event that telephone or Internet services
5 are not functioning, the notice requirements of this section shall
6 be deemed waived, and the legislative body, or designee of the
7 legislative body, shall notify those newspapers, radio stations, or
8 television stations of the fact of the holding of the emergency
9 meeting, the purpose of the meeting, and any action taken at the
10 meeting as soon after the meeting as possible.

11 (e) During a meeting held pursuant to this section, the legislative
12 body may meet in closed session pursuant to Section 54957 if
13 agreed to by a two-thirds vote of the members of the legislative
14 body present, or, if less than two-thirds of the members are present,
15 by a unanimous vote of the members present.

16 (d) All special meeting requirements, as prescribed in Section
17 54956 shall be applicable to a meeting called pursuant to this
18 section, with the exception of the 24-hour notice requirement.

19 (e) The minutes of a meeting called pursuant to this section, a
20 list of persons who the presiding officer of the legislative body,
21 or designee of the legislative body, notified or attempted to notify,
22 a copy of the rollcall vote, and any actions taken at the meeting
23 shall be posted for a minimum of 10 days in a public place as soon
24 after the meeting as possible.

25 ~~SEC. 11.~~

26 *SEC. 10.* The Legislature finds and declares that the fiscal
27 integrity and stability of local governmental agencies in this state,
28 including charter cities and charter counties, have a direct impact
29 on the long-term well-being of all the residents of this state. The
30 likelihood of businesses locating to or staying in the state is
31 affected by the perception of a functioning, transparent, and
32 practical governmental structure in the local governmental bodies
33 in California. Therefore, the Legislature finds and declares that to
34 ensure the statewide integrity of local government, ~~the procedures~~
35 ~~for the appointment and compensation of excluded employees are~~
36 *the provisions of this act are* an issue of statewide concern.
37 Therefore, ~~Section 3 of this act~~ shall apply to all counties and cities,
38 including charter counties, charter cities, and charter cities and
39 counties.

1 *SEC. 11. The provisions of this act are severable. If any*
2 *provision of this act or its application is held invalid, that invalidity*
3 *shall not affect other provisions or applications that can be given*
4 *effect without the invalid provision or application.*

5 SEC. 12. If the Commission on State Mandates determines
6 that this act contains costs mandated by the state, reimbursement
7 to local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.

O